March 15 2006, Ex Parte Handout

ACCESS TO VIDEO CONTENT
MB Docket No. 05-255

Background: Small video programming providers face many obstacles when trying to obtain video programming from content providers and attempting to enter new markets. Unreasonable rates, exclusive dealing arrangements, abuse of market power through non-disclosure agreements, tying practices, predatory pricing, shared head-end reservations, and prohibitions on Internet protocol (IP) and analog transport are some of the barriers faced by small video providers. Below are some recommendations that would make access to video programming reasonable and equitable.

- **Non-disclosure agreements should be prohibited**. Virtually all of the contracts negotiated between content providers and large multiple systems operators (MSOs) include non-disclosure agreements. By restricting the flow of information, the content providers make it virtually impossible to establish any semblance of "market rates." Consequently, smaller carriers must enter into their negotiations at a significant disadvantage, as they possess far less information than the party with whom they are negotiating.

- **Automatic escalation clauses must be reasonable**. Contract for programming typically contain automatic escalation clauses forcing prices up by a certain percentage each year. Small video service providers lack the leverage necessary to negotiate a better rate from the video programmers, forcing rural Americans to pay a premium for video service.

- **Tying arrangements should be prohibited.** Many networks require a carrier to take additional networks, as many as 12, in order to have access to a flagship network. The end result is that the small carrier must pay a higher price in order to insure access to the desired flagship network. This problem is much more dramatic for a small carrier with limited capital resources than for a large MSO who can afford to pay for the extra networks.

- **Program rates and terms should be available to the public and non-discriminatory.**

- **Predatory pricing by incumbent cable operators should be prohibited**. As new providers enter the market, the incumbent cable operator may drop its price for service way below the cost in the areas where it faces competition, making it impossible for the new entrant to gain a foothold. The incumbent cable operator is able to afford this practice because it will increase the price for service in areas where there are no competitors.

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- **Exclusive programming arrangements should be prohibited**. Some incumbent cable operators use their market power to make it difficult for competitors to obtain programming. The incumbents know that without access to certain programming, competitors cannot make their service attractive to subscribers. Certain large cable incumbents are known to have entered into exclusive programming arrangements. Contracts are written in such a way as to bar new entrants access to local or regional sports or news programming. Local subscribers expect programming and are unlikely to switch to a new provider who is unable to provide it.

- **IP-Transport must be allowed.** New small Telco-TV/IP-TV providers are facing discriminatory practices concerning their ability to get into the video services marketplace and gain access to video content because some content providers prohibit their video content from being distributed through the use of DSL or the Internet. They claim that IP-transport prohibition is required to prevent the piracy of their content on the Internet. This concern however, is easily addressed through today's encoding and encryption capabilities that enable IP-transport to be more secure than traditional cable transport.

- **Shared headends must be allowed.** Many small video companies have created an opportunity to provide video services to their communities by pooling their resources and jointly purchasing a head-end or leasing a head-end from another head-end owner. Sharing a head-end with several small companies substantially reduces initial investment and provides small video providers the opportunity to provide consumers with an affordable video services offering. Without the shared headend option, many rural consumers would not have video service or would be limited to direct broadcast satellite service (DBS) without any other competitive offering.

- **Encryption should not be mandatory for traditional CATV providers.** Some content providers are insisting that small analog cable TV providers upgrade their systems to support encryption. Many small rural video providers do not have the economies of scale and scope to incur the cost of providing encryption on their networks. Mandatory encryption would result in such a substantial increase in rates to consumers that it would effectively put the small company out of the video business and leave the residents in the community with either no cable service or only DBS service.

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